

## **REMARKS**

Claims 1-6, 8-10, 12, 13, 16, 18-23, 25, 28, 30, 32, 35, 39, 42, 51-54, 56, 71, 72, 74 and 75 are pending. Claims 1, 18, 28, 35, 42, 51 and 71 are the only independent claims.

All of the pending claims stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0087653 to Leung et al. (Leung) in view of Applicant Admitted Prior Art (AAPA). Applicant respectfully traverses these rejections, and requests reconsideration and allowance of the pending claims in view of the following arguments.

### **Substance of Interview**

As a preliminary matter, Applicant gratefully acknowledges the courtesies extended by the Examiner in the August 13, 2009, telephone interview with Applicant's representative, Jeffrey Lotspeich. The Examiner's comments and explanations were helpful and very much appreciated. Pursuant to MPEP § 713.04, Applicant provides the following remarks.

Prior to the interview, the Examiner was provided with a proposed Amendment, which included comments with regard to the cited references.

Independent claim 1 was discussed with regard to both Leung and AAPA. Applicant's position on these references was essentially the same as that forth below.

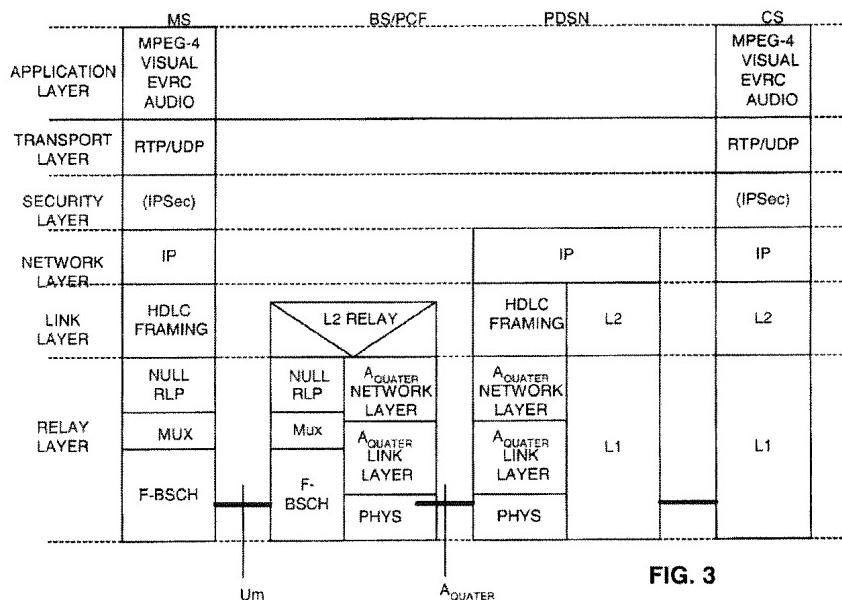
The Examiner acknowledged Applicant's position, and agreed that the foregoing amendment to claim 1 appeared to define this claim over the cited art of record. The Examiner further indicated that a more-detailed review of the amended claim, the cited references, as well as a further review and search of relevant prior art, would also be necessary before a patentability decision on this claim could be determined. The Examiner's attention to this application is gratefully acknowledged.

**Rejection under 35 U.S.C. § 103(a)**

All of the pending claims stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Leung in view of AAPA.

**“not include a physical layer”**

As a first point, claim 1 recites “wherein in the case of the point-to-multipoint service, the PDCP entity is located within a layer of a second network protocol stack, which does not include a physical layer.” Support for this feature can be found at least in, for example, Fig. 6 and the accompanying portions of the specification, such as para. 0082 of the Patent Publication. Regarding Leung, the claim is clearly distinguishable since Fig. 3 of Leung, which is set out below, requires that the PDSN is to include a physical layer.



**FIG. 3**

In other words, since the alleged protocol stack associated with the PDSN of Leung explicitly requires a physical layer, this reference cannot therefore teach the claim 1 element of “a second network protocol stack, which does not include a physical layer.”

**No teachings relating to the CRNC**

As a third point, claim 1 further recites “wherein in the case of the point-to-multipoint service, the PDCP entity is located within a layer of a second network protocol stack, which does not include a physical layer, that is located above a layer in which a radio link control (RLC)

entity is located, and above a layer in which a medium access control (MAC) entity is located. Recall that the claim also requires that the PDCP entity is “located. . . within a controlling radio network controller (CRNC) in the case of the point-to-multipoint service.”

Page 6 of the Office Action recognizes that Leung does not teach such features, and instead relies upon Fig. 4 of AAPA. In particular, the Office Action explained that Fig. 4 of AAPA shows a PDCP entity above both the RLC and MAC layers. (Office Action pg. 3).

Applicant recognizes that Fig. 4 of AAPA does indeed show a PDCP layer above both the RLC and MAC layers. However, such an arrangement of AAPA is for locating of the PDCP within the SRNC. There is nothing in AAPA which teaches or suggest anything relating to the network layering used for the CRNC. As such, AAPA cannot therefore teach the claimed PDCP entity and claimed network layer structure since its teachings relate to the PDCP being located within the SRNC, not within the CRNC as required by claim 1.

Furthermore, “A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.” MPEP § 2141.02 (emphasis in original). Here, the Office Action appears to only consider a selected portion of AAPA; namely, the portion which depicts the PDCP entity above both the RLC and MAC layers. However, as required by the identified portion of MPEP § 2142.02, the cited art (AAPA) must be considered as a whole. In doing so, one finds that the AAPA merely discloses a PDCP entity located above the RLC and MAC layers only in the case of the SRNC, not in the case of the CRNC. Moreover, AAPA further provides that when providing broadcasting or multicasting, “the number of PDCP entities existing at the SRNC is equal to the number of terminals.” (AAPA, para. 0052). This further illustrates that the relevant teachings of AAPA relate only to the SRNC, not to the CRNC.

In view of the identified deficiencies, the AAPA does not teach or suggest, in the case of the CRNC, a PDCP layer above both the RLC and MAC layers. In addition, the Office Action has not demonstrated how the cited references disclose that teachings relating to a SRNC apply to those of an entirely different system; namely, the CRNC.

In view of the foregoing, Applicant submits that both Leung and AAPA do not teach various features of claim 1. Applicant further submits that none of the other prior art of record supply any of the deficiencies of Leung. Therefore, for the reasons presented above, even if one skilled in the

art were to combine the teachings of Leung with AAPA in the manner asserted, claim 1 would still be patentable since all of the claim elements would not be taught or suggested.

Independent claims 18, 28, 35, 42, 51 and 71 contain language similar to claim 1, and thus, these claims are also believed to be patentable over the prior of record for reasons similar to those presented above in conjunction with claim 1. The rejected dependent claims are also believed to be patentable at least by virtue of their dependence upon their respective independent claims.

### **CONCLUSION**

In view of the above remarks, Applicant submits that the currently pending claims of the present application are in condition for allowance. Reexamination and reconsideration of the application is requested.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein; and no amendment made was for the purpose of narrowing the scope of any claim, unless Applicant has argued herein that such amendment was made to distinguish over a particular reference or combination of references.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California telephone number (213) 623-2221 to discuss the steps necessary for placing the application in condition for allowance.

Customer No. 035884

Respectfully submitted,

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